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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,064	09/13/2000	Donald Eugene Brodnick	GEMS8081.040	7626

27061 7590 03/01/2004

ZIOLKOWSKI PATENT SOLUTIONS GROUP, LLC (GEMS)
14135 NORTH CEDARBURG ROAD
MEQUON, WI 53097

EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT	PAPER NUMBER
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3762

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DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/661,064

Applicant(s)

BRODNICK ET AL.

Examiner

George R Evanisko

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-15 and 36.

Claim(s) withdrawn from consideration: 16-35.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

George R Evanisko
Primary Examiner
Art Unit: 3762

Continuation of 2. NOTE: The insertion of "integral to" and deletion of "integrated with" would require further consideration and search.

Continuation of 5. does NOT place the application in condition for allowance because: the arguments are related to the new issue of "integral to" which will require further search and consideration. In addition, the prior art still reads on the claims. The argument that the finality of the last office action should be withdrawn since the examiner initially used a "clearly anticipated" rejection and according to the MPEP the rejection must be explained is not persuasive. The use of "clearly anticipated" does not require an explanation. That is why it is "clearly anticipated". In addition, the argument that the Examiners note with the 102 form paragraph states that "insert either --clearly anticipated-- or --anticipated-- with an explanation at the end of the paragraph" is not persuasive since the form paragraph does not state that the examiners "must" provide an explanation and since "with an explanation at the end of the paragraph" is only directed to the --anticipated-- part since "or" is used and no comma is provided after --anticipated--. The argument that fixed/still images are not "video" is not persuasive. Definitions of video were previously provided that show that fixed images are video. The argument that "portable" is not shown in the references "as that term is used in the present application" is not persuasive since the examiner must take the term "portable" in its broadest reasonable interpretation. The definition of portable has previously been provided. The argument that Bornn teaches pairs of electrodes and would teach away from a 12 lead ECG is not persuasive. As previously pointed out, Bornn recognizes that other electrode systems and configurations are available and possible and can be used with his system.